U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 34886672

Date: NOV. 26, 2024

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Alien Workers (Extraordinary Ability)

The Petitioner, a social media influencer, seeks classification as an individual of extraordinary ability. *See* Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). This first preference classification makes immigrant visas available to those who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in their field through extensive documentation.

The Director of the Texas Service Center denied the petition, concluding the Petitioner did not satisfy at least three of the initial evidentiary criteria. The matter is now before us on appeal pursuant to 8 C.F.R. § 103.3.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will dismiss the appeal.

I. LAW

Section 203(b)(1)(A) of the Act makes visas available to immigrants with extraordinary ability if:

(i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,

(ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and

(iii) the alien's entry into the United States will substantially benefit prospectively the United States.

The term "extraordinary ability" refers only to those individuals in "that small percentage who have risen to the very top of the field of endeavor." 8 C.F.R. § 204.5(h)(2). The implementing regulation at 8 C.F.R. § 204.5(h)(3) sets forth a multi-part analysis. First, a petitioner can demonstrate sustained acclaim and the recognition of achievements in the field through a one-time achievement (that is, a major, internationally recognized award) or qualifying documentation that meets at least three of the ten categories listed at 8 C.F.R. § 204.5(h)(3)(i) – (x) (including items such as awards, published material in certain media, and scholarly articles). The regulation at 8 C.F.R. § 204.5(h)(4) allows a petitioner to submit comparable material if the standards at 8 C.F.R. § 204.5(h)(3)(i)-(x) do not readily apply to the individual's occupation.

Where a petitioner meets these initial evidence requirements, we then consider the totality of the material provided in a final merits determination and assess whether the record shows sustained national or international acclaim and demonstrates that the individual is among the small percentage at the very top of the field of endeavor. *See Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010) (discussing a two-part review where the documentation is first counted and then, if fulfilling the required number of criteria, considered in the context of a final merits determination); *see also Visinscaia v. Beers*, 4 F. Supp. 3d 126, 131-32 (D.D.C. 2013); *Rijal v. USCIS*, 772 F. Supp. 2d 1339 (W.D. Wash. 2011).

II. ANALYSIS

Because the Petitioner has not indicated or established she has received a major, internationally recognized award, she must satisfy at least three of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). The Director concluded the Petitioner did not fulfill any of the claimed evidentiary criteria. On appeal, the Petitioner maintains her qualification for four criteria. Issues and prior eligibility claims not raised on appeal are waived. *See, e.g., Matter of O-R-E-*, 28 I&N Dec. 330, 336 n.5 (BIA 2021) (citing *Matter of R-A-M-*, 25 I&N Dec. 657, 658 n.2 (BIA 2012)). For the reasons discussed below, the Petitioner did not demonstrate she meets at least three categories of evidence.

A. Evidentiary Criteria

> *Documentation of the alien's membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields.* 8 C.F.R. § 204.5(h)(3)(ii).

USCIS determines if the association for which the person claims membership requires that members have outstanding achievements in the field as judged by recognized experts in that field. [1] The petitioner must show that membership in the association requires outstanding achievements in the field for which classification is sought, as judged by recognized national or international experts.[2]

On appeal, the Petitioner maintains that she submitted sufficient evidence to establish that she qualifies for this criterion based on her "Platinum Creator" membership on the subscription-based social media

[1] *See generally* 6 *USCIS Policy Manual* F.2(B)(1), https://www.uscis.gov/policymanual
[2] *Id.*

platform [redacted] also known as [redacted][3] Associations may have multiple levels of membership.[4] The level of membership afforded to the person must show that in order to obtain that level of membership, recognized national or international experts judged the person as having attained outstanding achievements in the field for which classification is sought.[5]

Within her RFE response, the Petitioner provided a June 2024 letter from E-Z-, who states he is Chief Creative Officer at [redacted][6] "building platforms that help major brands, creators, and influencers grow their online enterprises." He states:

> When creating the [redacted] Platform, we established a points-based system and membership tiers to help us promote and prioritize the most active and engaging creators on our platform . . . . based on the money creators earn and the engagement they achieve through their content curation.
>
> [The Petitioner] is a member of our elite "Platinum" creator membership tier. To receive this membership level, [the Petitioner] first had to apply to join the platform. Unlike other platforms, [redacted] Platform operates on an application-only basis. . . . Our vision is to curate a community of professional, top-level creators that embody our company values and align with our views on civil rights, reproductive access, and queer liberation. As a part of this, we also review applications for that "it" factor, which transcends gender and encompasses an essence of mystery, swagger, and confidence. Following our review, [the Petitioner's] application was promptly approved, and she was granted access to the creator platform.
>
> Since joining the [redacted] Platform, [the Petitioner] has rapidly risen to the top percentage of professional creators we feature on our platform. She has, in rapid fashion, amassed 588,281 points and achieved Platinum membership status . . . . in less than a year of activity on our platform. This clear success is a direct result of [the Petitioner's] exceptional ability as a content creator. . . .

In addition, the Petitioner provided screenshots of pages from what she asserts is her [redacted] Platform profile page, showing she has achieved Platinum status and earned "588,281 of 1MM points

---

[3] The Petitioner does not pursue her previous claim that her possession of a "verification badge" or "blue check" on her Instagram account is a qualifying membership under 8 C.F.R. § 204.5(h)(3)(ii). An issue not raised on appeal is waived. *See, e.g.*, *O-R-E-*, 28 I&N Dec. at 336 n.5. Therefore, we will only respond to the Petitioner's claims regarding her Platinum Creator status on the [redacted] Platform.

[4] *See generally* 6 *USCIS Policy Manual*, *supra*, at F.2(B)(1).

[5] *Id.* (providing that as a possible example, general membership in an international organization for engineering and technology professionals may not meet the requirements of the criterion; however, if that same organization at the fellow level requires, in part, that a nominee have accomplishments that have, for example, contributed importantly to the advancement or application of engineering, science, and technology, and that a council of experts and a committee of current fellows judges the nominations for fellows, that higher, fellow level may be qualifying.)

[6] We note that although E-Z- indicates he previously served as CEO of the exclusive content platform [redacted] his letter is on [redacted] letterhead, not that of [redacted] In addition, his accompanying employment profiles on linkedin.com, [redacted] com, and forbes.com do not indicate his employment with [redacted] To the extent that this information is inconsistent with E-Z-'s letter, this inconsistency should be resolved in any future filing in this matter.

earned." The materials indicate she previously completed [redacted] Silver, and Gold, and that her next status is Diamond.

First, regarding the Petitioner's application to join the [redacted] Platform, the letter from E-Z- does not explain how aligning with the company's "views on civil rights, reproductive access, and queer liberation" and possessing "an essence of mystery, swagger, and confidence" are outstanding achievements. In addition, his letter does not address the selecting body who judges the membership criteria and whether it is comprised of recognized national or international experts in their fields.

Further, the Petitioner submitted an article dated 2023 from netinfulence.com, confirming that [redacted] celebrated the first anniversary of the subscription-based [redacted] social media platform, and articles from studyfinds.org and nytimes.com about the name recognition of the [redacted] brand and the prominent effect that [redacted] Magazine has had on popular culture. The issue for this criterion, however, is whether the individuals who determine membership are recognized national or international experts rather than the reputation of the company who employs them. We are not persuaded that every employee who works for a recognized company is also a recognized national or international expert in their field. Although the Petitioner submitted articles regarding the reputation of the [redacted] company, the Petitioner did not address the selecting body who judges the [redacted] Platform membership criteria and whether it is comprised of recognized national or international experts in their fields.

Moreover, the documentation submitted does not sufficiently explain how Platinum status is awarded to [redacted] Platform members, and that such status requires outstanding achievement as judged by experts in the social media influencing field. We note that the screenshots submitted from the [redacted] Platform website do not contain the Petitioner's name, to confirm that the information pertains to her. Assuming the Petitioner had established it does, the materials indicate a creator achieves Platinum status by earning an unstated minimum number of points up to "1MM." Based on this limited description of Platinum status, it is an objective, bright-line threshold, and it is reasonable to conclude that members who meet the threshold number of points will be granted Platinum status. The Petitioner did not establish that the [redacted] Platform requires outstanding achievements of their members for Platinum status, *as judged by recognized national or international experts in their disciplines or fields* (emphasis added). 8 C.F.R. § 204.5(h)(3)(ii).

Accordingly, the Petitioner did not establish she fulfills this criterion.

> *Evidence of commercial successes in the performing arts, as shown by box office receipts or record, cassette, compact disk or video sales.* 8 C.F.R. § 204.5(h)(3)(x).

This criterion focuses on volume of sales and box office receipts as a measure of the individual's commercial success in the performing arts. Therefore, the mere fact that an individual has performed in theatrical, motion picture, or television productions would be insufficient, in and of itself, to meet this criterion. The evidence must show that the volume of sales and box office receipts reflect the individual's s commercial success relative to others involved in similar pursuits in the performing arts.[7]

[7] *See* 6 *USCIS Policy Manual*, *supra*, at F.2(B)(1).

The Petitioner maintains eligibility for this criterion based on comparable evidence, including through the submission of her "2023 tax return, including her Schedule C (Form 1040) and Schedule I (Form 1040), confirming [she] is claiming $3,257,612 in profit earned by [her limited liability company] as income on her taxes in 2023," and a copy of the 2023 Financial Package for the company confirming "that the primary sources of this income are [redacted] and, therefore, earned through [her] activities as a social media influencer and content creator." The Director ultimately determined that the Petitioner did not establish how her claims are truly "comparable" to the commercial successes criterion.[8] We agree. The above evidence reflects the Petitioner's remuneration for work as a social media influencer and content creator rather than showing how her work for [redacted] has received high sales, receipts, or comparable evidence of commercial success relative to others involved in similar pursuits in the performing arts. Accordingly, she has not established that she satisfies this criterion, including through the submission of comparable evidence.

B. Prior approval of O-1 Nonimmigrant Status

We note that the record reflects that the Petitioner received O-1 status, a classification reserved for nonimmigrants of extraordinary ability. Although USCIS has approved O-1 nonimmigrant visa petitions filed on behalf of the Petitioner, the prior approval does not preclude USCIS from denying an immigrant visa petition which is adjudicated based on a different standard – statute, regulations, and case law. Many Form I-140 immigrant petitions are denied after USCIS approves prior nonimmigrant petitions. *See, e.g.*, *Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d 25 (D.D.C. 2003); *IKEA US v. US Dept. of Justice*, 48 F. Supp. 2d 22 (D.D.C. 1999); *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F. 2d 41 (2d. Cir. 1990). Furthermore, our authority over the USCIS service centers, the office adjudicating the nonimmigrant visa petition, is comparable to the relationship between a court of appeals and a district court. Even if a service center director has approved a nonimmigrant petition on behalf of an individual, we are not bound to follow that finding in the adjudication of another immigration petition. *See La. Philharmonic Orchestra v. INS*, No. 98-2855, 2000 WL 282785, at *2 (E.D. La. 2000).[9]

III. CONCLUSION

The Petitioner did not establish she satisfies the two categories of evidence, including through comparable evidence, discussed above. Although the Petitioner also argues eligibility for the published material in certain media criterion under 8 C.F.R. § 204.5(h)(3)(iii) and high salary under 8 C.F.R. § 204.5(h)(3)(ix), we need not reach these additional grounds because the Petitioner cannot fulfill the initial evidentiary requirement of three criteria under 8 C.F.R. § 204.5(h)(3). We also need not provide the type of final merits determination referenced in *Kazarian*, 596 F.3d at 1119-20. Accordingly, we reserve these issues.[10]

Nevertheless, we have reviewed the record in the aggregate, concluding it does not support a conclusion that the Petitioner has established the acclaim and recognition required for the classification

[8] *Id.*

[9] *See also generally* 6 *USCIS Policy Manual*, *supra*, at F.2(B)(3).

[10] *See INS v. Bagamasbad*, 429 U.S. 24, 25-26 (1976) (stating that, like courts, federal agencies are not generally required to make findings and decisions unnecessary to the results they reach); *see also Matter of L-A-C-*, 26 I&N Dec. 516, n.7 (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).

sought. The Petitioner seeks a highly restrictive visa classification, intended for individuals already at the top of their respective fields, rather than those progressing toward the top. *Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm'r 1994) (concluding that even major league level athletes do not automatically meet the statutory standards for classification as an individual of "extraordinary ability,"); *Visinscaia*, 4 F. Supp. 3d at 131 (internal quotation marks omitted) (finding that the extraordinary ability designation is "extremely restrictive by design,"); *Hamal v. Dep't of Homeland Sec. (Hamal II)*, No. 19-cv-2534, 2021 WL 2338316, at *5 (D.D.C. June 8, 2021), *aff'd*, 2023 WL 1156801 (D.C. Cir. Jan. 31, 2023) (determining that EB-1 visas are "reserved for a very small percentage of prospective immigrants"). *See also Hamal v. Dep't of Homeland Sec. (Hamal I)*, No. 19-cv-2534, 2020 WL 2934954, at *1 (D.D.C. June 3, 2020) (citing *Kazarian,* 596 at 1122 (upholding denial of petition of a published theoretical physicist specializing in non-Einsteinian theories of gravitation) (stating that "[c]ourts have found that even highly accomplished individuals fail to win this designation")); *Lee v. Ziglar*, 237 F. Supp. 2d 914, 918 (N.D. Ill. 2002) (finding that "arguably one of the most famous baseball players in Korean history" did not qualify for visa as a baseball coach). Here, the Petitioner has not shown the significance of her work is indicative of the required sustained national or international acclaim or it is consistent with a "career of acclaimed work in the field" as contemplated by Congress. H.R. Rep. No. 101-723, 59 (Sept. 19, 1990); *see also* section 203(b)(1)(A) of the Act. Moreover, the record does not otherwise demonstrate the Petitioner has garnered national or international acclaim in the field, and she is one of the small percentage who has risen to the very top of the field of endeavor. *See* section 203(b)(1)(A) of the Act and 8 C.F.R. § 204.5(h)(2). The record does not contain sufficient evidence establishing the Petitioner among the upper echelon in her field.

For the reasons discussed above, the Petitioner has not demonstrated her eligibility as an individual of extraordinary ability. The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision.

ORDER: The appeal is dismissed.